IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 22191 of 2007(P)

PETITIONER:

K.G.SADASIVAN, PRESIDENT,
VAYALA SERVICE CO-OPERATIVE BANK LTD.,
KOTTAYAM DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

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1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G), KOTTAYAM.

2. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (G), PALA.

3. THE UNIT INSPECTOR, RAMAPURAM,
O/O. ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (G), PALA.

BY GOVERNMENT PLEADER SMT.ANU SIVARAMAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 22191 OF 2007

Dated this the 1st August, 2007

JUDGMENT

Petitioner challenges Ext.P1 and seeks a declaration in respect of Ext.P1. Ext.P1 is purported to be issued under Section 66(2) of the Kerala Co-operative Societies Act, ordering inspection. It is purported to be issued by the Assistant Registrar General. Among the contentions taken, it is the contention that inspection under Section 66(2) is not contemplated on a complaint of a person who is not a creditor. It is the further case that the order is issued by the second respondent, Assistant Registrar. He is empowered in terms of delegation of powers for ordering enquiry/inspection on his own. Ext.P1 is not an order issued by the second respondent on his own, it is stated. The further contention is that the order issued is as directed by the first respondent. It is, therefore, stated to be not an exercise of power by the Authority who is otherwise empowered to conduct statutory enquiry or

inspection, since the inspection order is upon dictation. Therefore, Ext.P1 is bad in the eye of law. I heard the learned Government Pleader also. A Statement has been filed. It is stated therein that there is an allegation of misappropriation, that the enquiry was ordered through the Unit Inspector on 3.3.2007 and a Report was submitted to the Joint Registrar, and thus the enquiry was ordered and the third respondent was directed to conduct the enquiry. Since the third respondent was functioning as Returning Officer, the enquiry could not be completed.

2. A perusal of Ext.P1 would show that the Assistant Registrar is the authority who has ordered the inspection under Section 66(2) of the Act. In doing so, it would appear that there is a direction by the Joint Registrar to order an enquiry. It is on the basis of this that it is stated that the inspection is ordered. Here, the Assistant Registrar, though empowered under delegation of powers, has acted apparently in view of the direction issued by the Joint Registrar who incidentally is also

empowered to order inspection. Thus, the position would appear to be that if the question arises as to whether Ext.P1 is issued by the Assistant Registrar or by the Joint Registrar, the answer would be that it was not issued by the Joint Registrar and at the same time, though it is issued by the Assistant Registrar, who is empowered to issue it, it is issued on the basis of the direction issued by the Joint Registrar. It is not as if ordering of an inspection under Section 66(2) is not without consequence. In view of the ramifications that can follow an inspection, the responsibility must vest with the Officer who takes a decision to order inspection. In such circumstances, I feel that, in the facts of this case, the petitioner is entitled to succeed, in view of the fact that the order is issued by the second respondent apparently on the basis of the direction issued. Accordingly, Ext.P1 is not sustainable and it is quashed. However, I make it clear that I leave it open to the authority empowered, to take a decision in

the matter of ordering inspection in accordance with law.

The Writ Petition is disposed of as above.

K. M. JOSEPH, JUDGE

kbk.